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Helpful Hints: Requesting a Game Classification Opinion

Since 1992, the National Indian Gaming Commission (NIGC) has issued "Game Classification Opinions" to tribes and game manufacturers. Game Classification Opinions offer guidance to tribes regarding whether a particular game is a Class I, Class II, or Class III game under the Indian Gaming Regulatory Act.

The Indian Gaming Regulatory Act (IGRA) divides Indian gaming into three classifications.¹ Class I games include *social games* played “solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.”² Class II games include: (a) bingo; (b) pull tabs when played in the same location as bingo, and (c) non-banked card games authorized or not explicitly prohibited by the state in which the tribal operation is located.³ All other games are Class III.⁴ Examples of Class III games include, but are not limited to, the following: baccarat, *chemin de fer*, blackjack, slot machines, and electronic or electromechanical facsimiles of any game of chance.⁵

What is a Game Classification Opinion?

Although IGRA and the NIGC's regulations define three classes of games, these definitions cannot address every aspect that may arise as specific games are developed and technology advances. In those circumstances, tribes often ask for a game classification opinion from the NIGC. A Game Classification Opinion is advisory in nature. Game Classification Opinions are a tool the Office of General Counsel (OGC) utilizes to inform the public regarding the classification of a particular game. Understanding the classification of the game ensures that IGRA requirements are met before a game is offered; as requirements differ depending on the classification.

¹ 25 U.S.C. § 2703.

² 25 U.S.C. § 2703(6).

³ 25 U.S.C. § 2703(7). 25 C.F.R. § 502.3. IGRA's Class II definition includes other games played in the same location as bingo (lotto, punch boards, tip jars, instant bingo, other games similar to bingo), but they are rarely encountered that they do not merit discussion here.

⁴ 25 U.S.C. § 2703(8).

⁵ 25 U.S.C. § 2703(7)(B). 25 C.F.R. § 502.4.

Determining whether a game is Class II or Class III is often fact specific and necessitates a case-by-case approach. A Game Classification Opinion is based upon the information provided by the entity requesting the opinion. Changes to a game may change the game's classification. Thus, Game Classification Opinions only apply to the specific game submitted for review. Game Classification Opinions may be reconsidered and are not final agency action. Once issued, Game Classification Opinions are posted on our website for public review.

Why are Game Classification Opinions issued?

Game Classification Opinions offer guidance to tribes regarding whether a particular game is a Class I, Class II, or Class III game under the Indian Gaming Regulatory Act. With that knowledge, tribes are better able to comply with IGRA's requirements related to game classification as they decide whether to offer a particular game in their facilities, and may prevent enforcement action.

Who may request a Game Classification Opinion?

OGC will accept requests for a game classification opinion from tribes, tribal gaming commissions, or tribal gaming operations. Previously, the NIGC issued opinions at the request of game manufacturers or vendors. Unfortunately, OGC workload and other considerations requires us to change our policy and the NIGC can no longer issue opinions to manufacturers or vendors.

How do you request a Game Classification Opinion?

There are two ways to request a Game Classification Opinion:

- (1) mail your request to the NIGC Headquarters in Washington, DC, or;
- (2) submit your request by electronic mail at legal_opinions@nigc.gov.

What should a request for a Game Classification Opinion include?

Your request for a Game Classification Opinion should include a description of how the game will be played, the components of the game, pictures, diagrams, and anything else that would be helpful in describing the game. If there are any questions, which there often are, our staff will reach out to the requestor to seek clarification.

The submission should also specify the date by which parties hope to receive the legal opinion. Please note that the submission of additional documents or changes to any previously submitted documents will delay the review and thus the issuance of an opinion.

Submitting a request multiple times for the same game with a slight variation is discouraged. OGC will use its discretion whether additional reviews will be granted.

What is the review process?

The initial review of a Game Classification Opinion request will be conducted by an OGC staff attorney. Upon receiving the request, the staff attorney assigned to the review will reach out to the submitter to discuss the request. Submitters should feel free to contact OGC throughout the process. During the review stage, OGC staff attorneys may contact the parties to request additional information, or inform the parties that a legal opinion cannot be issued. The parties may also withdraw a request for a legal opinion at any time prior to an opinion being issued. The review process is not a negotiation between the parties and the OGC, as the OGC is simply providing a legal opinion. Following review, OGC staff attorneys will make a recommendation to the Associate General Counsels. Once the Associate General Counsels complete their review, the recommendation and supporting documents will be submitted to the General Counsel. The General Counsel will make the final decision whether to issue a legal opinion.

How long does it take to review a request for a Game Classification Opinion?

The amount of time it takes to complete a review depends on several factors – completeness of the submission, the complexity of the documents, the responsiveness of the parties, the availability of OGC staff, and competing priorities set by the Commission. OGC is not required to produce Game Classification Opinions, therefore statutory mandates and matters with regulatory deadlines take priority over Game Classification Opinions. We will do our best to meet reasonable time frames for providing an opinion, but submitters should expect the review to take weeks, not days.

Other Considerations:

As a general matter, legal opinions are issued by the OGC as a courtesy. Neither IGRA nor NIGC regulations require the OGC to issue legal opinions. Further, the legal opinion of the General Counsel is not final agency action and the issuance of a legal opinion is a voluntary process, both for the party making the request and the OGC.

Game Classification Opinions will be posted to the NIGC's website and may be the subject of Freedom of Information Act (FOIA) requests. To that end, submitters are encouraged to mark the specific financial and confidential terms in accordance with FOIA Exemption Four. FOIA further imposes a "segregability requirement" that requires the NIGC to release all reasonably segregable nonexempt material. As such, OGC strongly recommends submitters do not request NIGC withhold or entirely redact the submission, but identify only the specific material that comes within the scope of the exemption. Failure to identify exempt information and designations that appear obviously frivolous may, pursuant to NIGC regulation, be subject to disclosure without future opportunities to object. Legal opinions will serve as a submitter notice. To the extent the submission contains exempted information, parties must submit their proposed redactions within 30 days.